

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
)	
THE KIRK CORPORATION, <i>et al.</i> ,)	Case No. 09-17236
)	(Jointly Administered)
)	
Debtor.)	Hon. Carol A. Doyle

**ORDER APPROVING SALE OF PROPERTY, FREE AND CLEAR OF
LIENS, CLAIMS AND INTERESTS, AND GRANTING RELATED RELIEF
[ROCKWELL INTERESTS]**

This matter having been heard on the motion of Richard M. Fogel, not individually, but solely as the chapter 7 trustee (“Trustee”) of the bankruptcy estates of The Kirk Corporation, *et al.* (the “Debtors”), for authority to sell property outside the ordinary course of business, free and clear of liens, claims and interests, and to obtain related relief, all as more particularly set forth therein (the “Motion”)¹; the Court having granted a portion of the relief requested in the Motion by entry of an order (the “Bid Procedures Order”) at a hearing held on August 19, 2010; the Court having heard the statements of counsel and the evidence presented in support of the balance of the relief requested in the Motion at a hearing before the Court on September 23, 2010 (the “Sale Hearing”); the Court being fully advised in the premises of the Motion and having determined that proper notice has been provided with respect to the Motion, the Bid Procedures Order, the Sale Hearing, the Sale and Purchase of Membership Interest attached to the Motion as Exhibit A (the “Membership Interest APA”), and the Agreement for Purchase and Sale of Real Property attached to the Motion as Exhibit B (the “Real Estate APA” and, collectively with the Membership Interest APA, the “Agreements”); and the Court having determined and concluded,

¹ Any capitalized terms not defined herein shall have the meanings ascribed to them in the Motion or the Agreements, as applicable.

based on the Motion, the statements of the Trustee and counsel and the record in this case, as follows:

A. This Court has jurisdiction over the Motion and the transaction contemplated therein pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M). Venue of this case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are section 363 of the Bankruptcy Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure.

C. The Trustee has the right and power to sell property of the estate out of the ordinary course of business, subject to approval by this Court after appropriate notice and an opportunity for a hearing. *See* 11 U.S.C. §§ 363(b).

D. The Trustee asserts that the Property is property of the Debtors' bankruptcy estates. *See* 11 U.S.C. § 541(a).

E. As evidenced by the affidavits of service filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale of the Property pursuant to the Agreements between the Trustee and Rockwell Investments, LLC ("Buyer") has been provided in accordance with section 363 of the Bankruptcy Code and Bankruptcy Rules 2002(a) and 6004(a), (ii) such notice was good and sufficient and appropriate under the circumstances of the Debtor's case, and reasonably calculated to reach and apprise all holders of claims and interests about the Sale, and (iii) no other or further notice of the Motion, the Sale Hearing and/or the Sale shall be required.

F. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities in these cases.

G. As demonstrated by: (i) the testimony and other evidence proffered or adduced at the Sale Hearing; and (ii) the representations of counsel made on the record at the Sale Hearing, the Trustee has marketed the Property and conducted an auction sale process in a non-collusive, fair and good faith manner that complied in all respects with the Bid Procedures Order. A reasonable opportunity has been given to any interested party to make a higher and better offer for the Property.

H. The terms of the Agreements were the subject of arms length negotiations between the Trustee and the Buyer. Further, no party has objected to the Sale or the Agreements on the grounds of fraud or collusion.

I. Buyer is a good faith purchaser within the meaning of 11 U.S.C. § 363(m) and is entitled to the protections afforded thereunder.

J. The Trustee, in his business judgment, believes that the Buyer's offer for the Property is fair and reasonable and that approval of the proposed Sale would be in the best interest of the Estates.

K. The consideration provided by the Buyer for the Property pursuant to the Agreements (i) is fair and reasonable, (ii) is the highest and best offer for the Property, (iii) will provide a greater recovery for the Debtors' stakeholders than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act and all other applicable laws.

L. With respect to any and all persons or entities asserting any Claim, Interest or Lien on, with respect to or in connection with the Property, (i) applicable non-bankruptcy law permits sale of such property free and clear of such Claim, Interest or Lien; (ii) such person or

entity has consented to the sale and transfer free and clear of its Lien, with such Lien to attach to the proceeds of such sale and transfer; (iii) such Lien is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such Lien is in bona fide dispute; and/or (v) such person or entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such Claim, Interest or Lien; so that the conditions of section 363(f) of the Bankruptcy Code have been satisfied. Those holders of a Claim, Interest or Lien who did not object or who withdrew their objections to the Motion are deemed to have consented to the Motion pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claim, Interest or Lien who did object fall within one or more of the subsections of section 363(f) of the Bankruptcy Code.

Q. The Buyer would not have entered into the Agreements and would not consummate the Sale, thus adversely affecting the Debtors' estate and creditors, if the Property was not free and clear of all Claims, Interests or Liens, or if the Buyer would, or in the future could, be liable for any of the Claims, Interests or Liens.

M. The notice and opportunity for objection and hearing provided with respect to the Motion and the Sale were adequate and appropriate under the circumstances.

NOW THEREFORE IT IS ORDERED:

1. The relief requested in the Motion is granted and approved in all respects. The terms of the Agreements (as amended) are approved in all respects.

2. The Trustee is authorized and directed to take any and all actions necessary or appropriate to consummate the Sale in accordance with the Motion, the Agreements and this Order for the aggregate sum of \$1,500,000.

3. Upon the closing, the Property shall be transferred, sold and delivered to the Buyer free and clear of all Claims, Interests and Liens of any person or entity that encumber or relate to or purport to encumber or relate to the Property, with such Claims, Interests and Liens attaching to the net proceeds of the Property with the same validity, priority, force and effect which they now have against the Property. The transfer of the Property to the Buyer constitutes a legal, valid and effective transfer of the Property and shall vest the Buyer with all right, title and interest of the Debtors in and to the Property. Effective on the date of entry of this Order, all persons and entities (including, but not limited to, creditors, administrative agencies, tax and regulatory authorities, governmental departments, secretaries of state, federal, state and local officials maintaining any authority relating to environmental laws, and their respective successors or assigns) asserting any Claims, Interests and Liens against the Debtors' estate or any of the Property shall be permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind, whether in law or equity, against the Buyer as alleged successor or otherwise with respect to any Claim, Interest or Lien on or in respect of the Property or arising out of or related to the Sale. Without limiting the generality of the foregoing, Buyer shall have no liability for any Claim against the Debtors or their directors, officers, or shareholders, whether such Claim is known or unknown, matured or unmatured, liquidated or unliquidated, contingent or non-contingent.

4. From the proceeds of Sale at closing, the Trustee is authorized to pay the usual and customary seller's charges for title insurance, surveyor fees, transfer fees and other closing costs (collectively, the "Closing Costs").

5. After payment of the Closing Costs, the Trustee shall disburse the net proceeds of Sale to JPMorgan and the Estate in accordance with the terms of the Settlement Agreement.

6. The Trustee is authorized to execute all necessary or appropriate documents in connection with the Sale of the Property.

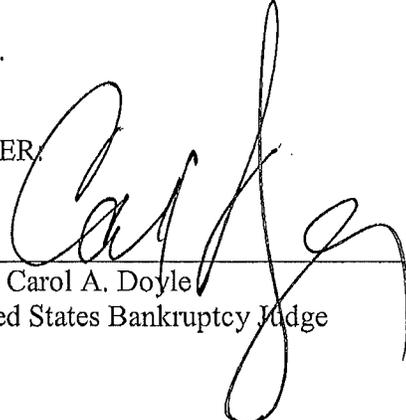
7. The Court shall retain jurisdiction over the parties and the subject matter in order to interpret or enforce all provisions of this Order and the Agreement.

8. This Order shall be effective immediately and enforceable upon its entry. The stay imposed by Fed. R. Bankr. P. 6004 is hereby waived.

Dated: _____

9/23/10

ENTER



Hon. Carol A. Doyle
United States Bankruptcy Judge

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